

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

ANTHONY REBMANN,

Plaintiff,

v.

ASTEC, INC. d/b/a ASTEC OF  
TENNESSEE, and ASTEC INDUSTRIES,  
INC.

Defendants.

Case No.: \_\_\_\_\_

**DEFENDANTS ASTEC, INC.'s AND  
ASTEC INDUSTRIES, INC.'S NOTICE  
OF REMOVAL**

Removed from:

Supreme Court of the State of New York  
Erie County, Index No. 804068/2021

**TO:** Clerk of the U.S. District Court for the Western District of New York:

**PLEASE TAKE NOTICE THAT** Removing Parties Astec, Inc., (inadvertently identified as Astec, Inc. d/b/a Astec of Tennessee) and Astec Industries, Inc. ("Defendants"), respectfully show this Court:

1. Plaintiff Anthony Rebmann filed a Complaint dated March 26, 2021 in the State of New York, Supreme Court, County of Erie, styled *Anthony Rebmann v. Astec, Inc. d/b/a Astec of Tennessee and Astec Industries, Inc.*; Index No. 804068/2021 ("Complaint"). Summons was issued, and the Defendants have now been served with a copy of the Complaint.

2. Removal to this Court is proper under 28 U.S.C. §§ 1441, 1446, and 1332, as there is diversity of citizenship between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000.00, excluding interest, costs and attorneys' fees.

a. Plaintiff and Defendants have diverse citizenship.

(1) Plaintiff is a New York citizen, residing in the Town of Collins, Erie County, New York. (Complaint, ¶ 1.)

(2) Defendant Astec, Inc. (inadvertently identified as Astec, Inc. d/b/a Astec Tennessee) is a foreign corporation, organized and existing under the laws of Tennessee. (Complaint, ¶ 2.)

(3) Defendant Astec Industries, Inc. is a foreign corporation, organized and existing under the laws of Tennessee. (Complaint, ¶ 4.)

b. The Amount in Controversy Exceeds \$75,000.00: Plaintiff's Complaint does not specify an amount in controversy, so Defendants served on Plaintiff a Demand for Specific Relief under NY CPLR § 3017. Plaintiff served his response on July 22, 2021, claiming damages of \$20,000,000.00. *See Exhibit 9.*

3. Venue is proper in this court under 28 U.S.C. § 1441(a), as the Western District of New York encompasses Erie County, where the matter is currently pending.

4. Defendants' Removal is Timely.

28 U.S.C. § 1446(b) allows for removal "within thirty days after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." The removal clock, however, does not start "until the plaintiff serves the defendant with a paper that explicitly specifies the amount of monetary damages sought." *Moltner v. Starbucks Coffee Co.*, 624 F.3d 34, 38 (2d Cir. 2010). That paper was not served until July 22, 2021, in the form of Plaintiff's response to Defendants' Demand for Specific Relief. Defendants remain well within this thirty-day window.

5. Under 28 U.S.C. § 1446(a), and pursuant to Local Rule 81(a)(3), an index of all documents filed in the State Court Action is attached hereto as **Exhibit 1**, and separately tabbed copies of all documents and proceedings to date in the State Court Action are attached hereto as **Exhibits 2 to 9**.

6. Under Local Rule 81(a)(4), the undersigned hereby certifies that he has provided all other parties in the Subject Action with the Notice of Removal and attachments being filed with this Court.

7. Under 28 U.S.C. § 1446(d), Defendants are filing a copy of this Notice of Removal with the Clerk of Court, Supreme Court, County of Erie, State of New York.

8. By filing this Notice of Removal, Defendants do not waive any defense that may be available to them.

9. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendants Astec, Inc. and Astec Industries, Inc., request the above-captioned action be removed from the State of New York, Supreme Court, County of Erie, to the United States District Court for the Western District of New York, Buffalo, New York.

Dated this 4<sup>th</sup> day of August, 2021.

Respectfully submitted,

/s/ David R. Adams

By: \_\_\_\_\_

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~and~

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